

Apr 03, 2020

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MERLE WILLIAM HARVEY,

Petitioner,

v.

JEFFERY A. UTTECHT,

Respondent.

NO: 2:19-CV-294-RMP

ORDER DISMISSING ACTION

By Order filed October 22, 2019, the Court directed Petitioner Merle William Harvey to show cause why his petition should not be dismissed as time-barred under 28 U.S.C. § 2244(d). ECF No. 6. Petitioner, a prisoner at the Coyote Ridge Corrections Center, is proceeding *pro se* and has paid the \$5.00 filing fee; Respondent has not been served. The Court extended the deadline to comply with the Order. *See* ECF No. 8. However, Petitioner has failed to demonstrate that his federal habeas petition is timely.

Petitioner challenges his 2010 Spokane County jury convictions for first degree murder, second degree murder, and two counts of unlawful possession of a

1 firearm, which were affirmed on appeal. The Washington State Supreme Court
2 denied review of the direct appeal on January 7, 2016, and Petitioner sought no
3 further direct appellate review. ECF No. 1 at 2–4. Rather, he pursued an
4 unsuccessful Personal Restraint Petition which was dismissed on April 12, 2018.
5 *Id.* at 4.

6 Although granted the opportunity to show that his federal habeas petition is
7 timely either under the statute or because equitable tolling is warranted, Petitioner
8 has not done so. Petitioner was cautioned that the failure to respond would be
9 construed as his consent to the dismissal of this action. ECF No. 6 at 6. He did not
10 respond. Accordingly, **IT IS ORDERED** this action is **DISMISSED** as time-
11 barred under 28 U.S.C. § 2244(d).

12 **IT IS SO ORDERED.** The District Court Clerk is directed to enter this
13 Order, enter judgment, provide copies to Petitioner, and **close the file**. The Court
14 certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could
15 not be taken in good faith, and there is no basis upon which to issue a certificate of
16 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of
17 appealability is therefore **DENIED**.

18 **DATED** April 3, 2020.

19 *s/ Rosanna Malouf Peterson*
20 ROSANNA MALOUF PETERSON
21 United States District Judge